

Message

From: Hurlid, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F3B04131F1145FCB4CCF5B0A64C1AC4-KHURLD]
Sent: 12/7/2017 8:41:32 PM
To: McDavit, Michael W. [Mcdavit.Michael@epa.gov]
Subject: RE: talking points for week of 12/4-12/8

UGH! It did not send my whole e-mail! Here is the rest. It is not as well crafted, but has the main points.

404(g) programs (staff contact: Kathy Hurlid)

Menominee Tribe of WI – OGC requested and received the okay to consult with the Menominee Tribe of WI regarding their concerns about a 404 permit along the Menominee River the state of MI will put out for public comment in the next week or so (EPA will have 90 days to provide any comments). The Region will be in listening mode and will not comment on the permitting authority over the Menominee River which the Tribe has provided EPA and the USACE with an NOI regarding their belief the Menominee is claiming should be the USACE however it was listed as an assumed water in the 1984 program approval.

6th Circuit Oral Argument: On December 6th, Ellen J. Durkee, Appellate Section of DOJ's ENRD, presented oral argument in Marquette County Road Comm'n v EPA, defending the US government's position that an EPA objection to a state CWA 404 permit is not a final agency action as the permitting process does not end with EPA's objection. Ms. Durkee said the justices did appear to understand section 404(j) (the section of the Act regarding EPA objections to state or tribal 404 permits that are inconsistent with the Act and/or 404(b)(1) guidelines) and that objections are not a veto or denial of a permit. They did inquire as to why she thought Hawkes did not apply but did not inquire further after she responded.

Florida – Next week R4 and OWOW will travel to Tallahassee to work with the state of FL on their effort to assume the CWA section 404 permitting program. The two-day face to face meeting will focus on consistency between the state's statutes and regulations and the CWA's. At the request of the state, R4 convened a meeting between FDEP and the USNMF and the USFWS regarding FL's efforts to assume the program and ESA requirements. Additionally, R4 has been approached by the Seminole and Miccosukee Tribes regarding FL's efforts. EPA will meet with the tribes to discuss assumption requirements and the process. They will not weigh in on FL's process right now.

Arizona – On December 4th Arizona held a public meeting regarding their efforts to assume the CWA section 404 permitting program. R9 listened in. The state indicated they were looking to assume in 2019. During the call the state was unable to answer many of the questions raised, but they are still very early in the process. R9 and OWOW are working with state staff to help them understand the requirements and program (e.g, what needs to be in statute vs what could be in regulations or guidance) as the state works to craft implementing statutory language.

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